

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KENNETH DEENE LINDELL,

Plaintiff,

v.

STATE OF WASHINGTON *et al.*,

Defendants.

Case No. C07-5025FDB

ORDER TO SHOW CAUSE

This civil rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Plaintiff was given leave to proceed *in forma pauperis*. Review of plaintiff's proposed complaint in this matter is difficult. Plaintiff is challenging either, an on going criminal proceeding, or an ongoing civil commitment. Plaintiff speaks of a charge and a VUCSA violation, charges, and a probable cause statement, (Dkt. #1, proposed complaint). He also mentions medication against his will, and incompetence (Dkt # 1, proposed complaint). Plaintiff's current address is Western State Mental Hospital. The proposed complaint is 36 pages long and is not a model of clarity.

The court now **ORDERS PLAINTIFF TO SHOW CAUSE** why this action should not be dismissed prior to service.

ORDER

1 When a person is challenging the very fact or duration of his physical imprisonment, and the relief he  
2 seeks will determine that he is or was entitled to immediate release or a speedier release from that  
3 imprisonment, his sole federal remedy is a writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 500  
4 (1973). In June 1994, the United States Supreme Court held that "[e]ven a prisoner who has fully exhausted  
5 available state remedies **has no cause of action under § 1983 unless and until the conviction or sentence**  
6 **is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus.**" Heck v.  
7 Humphrey, 512 U.S. 477, 487 (1994)(emphasis added). The court added:

8 Under our analysis the statute of limitations poses no difficulty while the state challenges are  
9 being pursued, since the § 1983 claim has not yet arisen. . . . [A] § 1983 cause of action for  
10 damages attributable to an unconstitutional conviction or sentence does not accrue until the  
conviction or sentence has been invalidated.

11 Id. at 489. "[T]he determination whether a challenge is properly brought under § 1983 must be made based  
12 upon whether 'the nature of the challenge to the procedures [is] such as necessarily to imply the invalidity of  
13 the judgment.' *Id.* If the court concludes that the challenge would necessarily imply the invalidity of the  
14 judgment or continuing confinement, then the challenge must be brought as a petition for a writ of habeas  
15 corpus, not under § 1983." Butterfield v. Bail, 120 F.3d 1023, 1024 (9th Cir.1997) (*quoting* Edwards v.  
16 Balisok, 520 U.S. 641 (1997)).

17 Plaintiff has not indicated he has received relief in habeas corpus. At the current time it appears he fails  
18 to state a claim. Plaintiff should show cause why this action should not be dismissed for failure to state a claim  
19 on or before **March 2, 2007**. The Clerk is directed to send plaintiff a copy of this to plaintiff and note the  
20 **March 2, 2007**, due date on the court's calendar.

21  
22 DATED this 2, day of February, 2007.

23  
24 /S/ J. Kelley Arnold  
25 J. Kelley Arnold  
26 United States Magistrate Judge  
27  
28

ORDER